IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 19TH JANUARY 2006 / 29TH POUSHA, 1927

WP(C).No. 1336 of 2006(H)

PETITIONERS:

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1. BHAVANI V.K., AGED 38, ANJEN MAHDAM, NEAR PADMA GARDENS, GOVERNMENT SANSKRIT COLLEGE ROAD, THRIPUNITHURA (GUEST LECTURER, S.S.U.S, KALADY).

2. JYOTSNA G., AGED 30, "PARVATHI" KAKKURN POST, CALICUT(R.E.C GOVERNMENT HIGHER SECONDARY SCHOOL, NITPO, CHATHAMANGALAM, CALICUT)

3. GEETHA T.K., AGED 33, KIZHEKKETHAMARAKULATHU HOUSE, NETOOR P.O., MARADUVIA) (GUEST LECTURER, GOVERNMENT SANSKRTI COLLEGE, THRIPUNITHURA).

4. KAVITHA S., AGED 35, MANGAT HOUSE, EDAKKUNNI, THYKATTUSERRY P.O., OLLUR(VIA), THRISSUR(GUEST LECTURER, S.S.U.S., PAYYANNUR CENTER).

5. LEELA K.N., AGED 37, KOLANGATTU HOUSE, SOUTH PARUR, UDAYAMPEROOR(GUEST LECTURER, GOVERNMENT SANSKRIT COLLEGE, THRIPUNITHURA)

6. HARISREE K., AGED 31, "VISHNUPRIYA", CHEMMANADU, VARIKOLI P.O., PUTHENCRUZ (GUEST LECTURER, S.S.U.S., KALADY)

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI

RESPONDENTS

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1. STATE OF KERALA, TO BE REP. BY SECRETARY, COLLEGIATE EDUCATION, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. KERALA PUBLIC SERVICE COMMISSION, PATTOM, THIRUVANANTHAPURAM, REP. BY SECRETARY.

3. LAKSHMY C., POOMANJALI, NADUVILEDATHU LANE, NEAR GOVERNMENT SANSKRIT COLLEGE ROAD, THRIPUNITHURA, ERNAKULAM.

4. ASOK KUMAR N.K., NADAYIL THEKKATHIL,
C.S.M.NAGAR, SASTHAMANGALAM, THIRUVANANTHAPURAM.

5. SUSEELA K.C., KUDUMANTHARA,
KUNDANOOR P.O., MARADU(VIA).

6. UMA A.K., AYAKATHE HOUSE,
FIRST LAMP STREET, AYALUR P.O.,
PALAKKAD, PIN-678 510.

7. SAMBHU POTTY V., GUEST LECTURER IN
SANSKRIT (MYAYA), REGIONAL CENTER S.S.U.S.,
THRISSUR.

8. VIVEKANANDAN S.S., GOVERNMENT HIGHER
SECONDARY SCHOOL, H.S.S.T. SANSKRIT, OCHIRA.

9. DEEPTHI R.S., MUSLIM GIRLS HIGHER
SECONDARY SCHOOL, H.S.S.T. SANSKRIT,
KANIYAPURAM, THIRUVANANTHAPURAM.

10. VIJAYARAGHAVAN O.R.,
QUEST LECTURER IN SANSKRIT(GENERAL)S.S.U.S.,
KALADY.

11. MANIKANTAN B., RESEARCH SCHOLAR,
DEPARTMENT OF SANSKRIT, UNIVERSITY OF KERALA,
KARIVATTOM, THIRUVANANTHAPURAM.

12. RENUKA K.C., KANDARATH MALAYIL HOUSE,
MURIA,MANGALAM, MAMALA P.O., PIN-682 305.

13. SHIBA T.C., THADIKULANGARA HOUSE,
KARIKODE, MULANTHURUTHI P.O., ERNAKULAM.

14. LAIJAMMA P.N., GUEST LECTURER IN
NYAYA SANSKRIT, GOVERNEMNT SANSKRIT COLLEGE,
THRIPUNITHURA.

15. JYOTHIRMAYI P.C., SUDHAMMA MAMKAVU,
CALICUT DISTRICT.

16. SUDHARSANAN P.N., PUTHENPURAKKAL HOUSE,
VALAYANCHIRANGARA P.O., PERUMBAVOOR,
PIN-683 556.

17. SOUMYA N.K., NELEPPADI HOUSE,
THALI P.O. CALICUT.

18. RAJEEV P.P., PUTHENKOTAYI HOUSE,
VALAYCHIRANGARA P.O., PERUMBAVOOR,
PIN-683 556.

19. PRADEEP VARMA P.K., SUDHAMMA PALACE,
PILATHARA P.O., PAYYANNUR, KANNUR.

20. GIRIJA T.V., KORANGATTIL HOUSE,
VETTUKATTIRI P.O., CHERUTHURUTHI (VIA),
THRISSUR, PIN-679 531.

21. VINODKUMAR, KATTUMUNDA,
KATTUMUNDAKKAL HOUSE, A.R. NAGAR P.O.,
MLAPPURAM DISTRICT-676 305.

22. ESWARAN E.N., EGDANEELAMANA ILLAM,
SREESTHA P.O., KANNUR.

23. MAYA A.S., DHANASREE,
NEAR GROVER HOSPITAL THRIPUNITHURA.

24. LILA M.L., MARIKUNNEL HOUSE,
KAIPUZHA P.O., KOTTAYAM, PIN-686 602.

25. ANILKUMAR S., PADMAVILASAM,
KARIPPAL P.O., KANNUR, PIN-670 581.

BY ADV. SRI.GEORGE ABRAHAM
SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP
SRI.B.RAGUNATHAN
SRI.V.V.MATHEW
SRI.T.R.RAMACHANDRAN NAIR
SRI.P.C.SASIDHARAN SC, PSC
GOVT.PLEADER AMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 4-10-2006, THE COURT ON 19/01/2006 DELIVERED THE FOLLOWING:

W.P.(C) No.1336 of 2006 APPENDIX

Petitioner's Exhibits

Ext.P1. Photocopy of the relevant page of notification in Mathrubhumi Thozhilvartha dated 11-12-2004

Ext.P2. Photocopy of the rank list of lectureres in Sanskrit (Nyaya) dated 22-12-2005.

Ext.P3. Photocopy of the rank list of lecturers in Sanskrit (Vyakarana) dated 31-12-2005

Ext.P4- Photocopy of the counter- affidavit in W.P.(C) No.19721/2005 dated 27-10-2005

Ext.P5. Photocopy of the circular No.12/1995

Respondent's Exhibits

Ext.-R10(a). True copy of the Certificate in Nyaya Siromani in 1984 from Madras University

Ext.-R10(b). True copy of the Certificate in Vidya Varidhi in 1991.

Ext.R10 (c) True copy of the UGC NET Certiifcate in Sanskrit in 1989

Ext.R10 (d) .True copy of the UGC-NET in Nyaya in 1991.

Ext.R10 (e) True copy of the Certificate in Sanskrit M.A from Sree Venkiteswara University

Ext.R10(f). True copy of the communication No.F.46-1/63/GU dated 23-1-1964

Ext.R10(g) True copy of the communication No.F.7-1-1986-SK-2 dated 20th October 1986

A.K.BASHEER.J

W.P(C) No. 1336 OF 2006

Dated this the 19th day of January 2007

JUDGMENT

Is the selection process conducted by the Kerala Public Service Commission (for short the Commission) to the post of Lecturer in Sanskrit without holding written test illegal and vitiated?

2. A brief reference to the essential facts is necessary to consider the above question.

3. Ext.P1 notification was issued by the Commission inviting applications from eligible candidates for selection and appointment to the post of Lecturer in Sankrit (Nyaya, Vyakarana and Vedantha) . In this writ petition we are concerned with the four vacant posts in Nyaya and five in Vyakarana which were notified. The grievance of the petitioners is that the Commission completed the selection process without holding written test for the eligible candidates including the petitioners. Selection was made on the basis of the marks obtained by the candidates in the interview and their academic marks/qualifications. Ext.P2 and P3 ranked lists of selected candidates in Nyaya and Vyakarana respectively were published by the Commission thereafter. While petitioner No.1 was placed at rank

No.10 in Ext.P2 ranked list (Nyaya), petitioners 2 to 6 were placed at rank Nos.7, 8,10,14,16 in Ext.P3 list for Vyakarana candidates. Respondents 3 to 14 were placed at higher rank positions in the two lists.

4. It is contended by the petitioners that the selection process is totally vitiated in the eye of law, since the merit of the candidates could not have been assessed without conducting a written test. It is also contended that Ext.P5 circular which prescribes grading system for awarding marks for selection on the basis of academic marks obtained by the candidates is totally unsustainable. Petitioners therefore pray for issuance of a writ of certiorari to quash Exts. P2, P3 and P5 . There is a further prayer to issue a writ of mandamus or such other writ order or direction to respondent No. 2 to conduct written test that maximum 100 marks for the above two posts and prepare the ranked list on the aggregate marks for written test and interview or in the alternative on the basis of marks obtained by the candidates in the written test, interview and academic marks.

5. The Commission in its counter- affidavit has justified the procedure adopted by it, contending interalia that it is well within its powers to choose any of the methods for preparing the ranked lists as enumerated

in the Rules of Procedure . The written test need be conducted only if the number of qualified applicants is " unduly large". The Commission is empowered to conduct all or any of the modes of examination/ test, namely written, Practical, Physical efficiency, oral (interview) or any other test or examination which the commission may deem fit to hold. Since the number of candidates who had qualified to be considered for the post of lecturer in Sanskrit(Nyaya) was 14, as against the four vacancies available under that category, and the number of candidates for the post of Lecturer in Sanskrit (Vyakarana) was 16 as against the available vacancy of five , the selection process was finalised based on the academic marks of the candidates and the marks obtained by them in the interview. Exts.P2 and P3 ranked lists were published in December 2005. Petitioners have preferred this writ petition long after the selection process was over. It is further contended by the Commission that the petitioners having participated in the selection process, cannot be allowed to challenge its validity, once it is found that their rank position is very low in the list.

6. Respondent No.10 in his counter- affidavit has also supported and justified the procedure adopted by the Commission. He has also denied

the allegation that he is not qualified to hold the post of Lecturer. The qualification obtained by him (Nyaya Shiromani) of Madras University is not a "title" as contended by the petitioners. In Ext.R10(f) the above position had been clarified by the Ministry of Education under the Government of India. It is also contended by respondent No. 10 that in Ext.R 10(g) the Government had again clarified the above position. He had acquired NET in Nyaya and Ph.D (Nyaya). In the counter- affidavit filed by respondent Nos. 16 to 18 also, the selection process has been justified . It is pointed out by these respondents that the petitioners had participated in the interview without any protest.

7. It is pertinent to note that Ext.P1 notification did not indicate the mode of selection that was likely to be followed by the commission. It is contended by the Commission that it was open to it to follow any one of the modes of test/ examination namely written, oral, practical etc. As rightly pointed out by the Commission the number of candidates who had come into the zone of consideration was not unusually large. Therefore if the Commission thought it fit to complete the process of selection by reckoning the academic marks obtained by the candidates in their

respective examinations and also the marks obtained by them in the interview, it cannot be held that the action of the Commission was vitiated. The petitioners do not have a case that the Commission had adopted any differential treatment among the candidates who came into the zone of consideration. The interview Board or Committee constituted for the purpose, had assessed the merit of the candidates not only on the basis of the academic marks obtained by them but also by their performance in the interview, Oral examination (viva voce) is undoubtedly a well recognised and accepted mode to assess not only the communicative skill but also the general merit of the candidates. Undoubtedly communicative skill is an essential ingredient or quality to be possessed by a teacher. Assessment of the merit of a candidate on the basis of the marks obtained by him/her in a written examination is also undoubtedly desirable . But it cannot be insisted that the recruiting agency should always hold the written test whatever be the category of post in question. In the case on hand it cannot be said that the merit of the candidate could have been assessed only if written test had been held. All the candidates are post-graduates in the respective subjects. They are also supposed to hold the requisite other

qualification in teaching methodology. Therefore the scope for a written examination may be minimal. Of course if the number of candidates had been unusually large, the Commission can restrict the number by eliminating some of the candidates by holding a written test. But in this case, admittedly the number of vacancies was not huge and the candidates who came into the zone of consideration were very few. In that view of the matter, and particularly in the facts and circumstances of this case I do not find any illegality or irregularity in the selection process conducted by the Commission.

8. The petitioners have placed heavy reliance on Ext.P4 counter-affidavit filed by the Commission in another case which involved selection and appointment of Lecturers. It is true that in Ext.P4 the Commission had conceded that selection of Lecturers would be on the basis of the marks obtained by the candidates in the written test and interview, apart from the academic marks. The Commission has not as a general rule stated that the written test is to be avoided in all cases. The case of the Commission is that it can adopt all or any of the five modes enumerated earlier in the judgment. Therefore I am not persuaded to accede to the request made by

the petitioners to pin down the Commission to the stand taken by it in Ext.P4.

9. Petitioners have placed reliance on a few decisions of the Supreme Court in support of their contentions (**Maharashtra State Road Transport Corporation and others Vs Rajendra Bhimrao Mandve and others(AIR 2002 SC 224),Vijay Syal and another Vs.State of Punjab and others (AIR 2003 SC 4023) Secretary A.P.Public Service Commission Vs B.Swapna and Others (2205) 4 SCC 154) But,** I am afraid in the facts and circumstances of this case the dicta laid down in the above judgment would not be of any assistance to the petitioners.

10. There is yet another crucial aspect which dis-entitles the petitioners to get any relief in this writ petition. As noticed already, Ext.P2 ranked list was published on 22-12-2005. Ext.P3 was published on 31-12-2005. It has been asserted by the Commission in its counter-affidavit that the four notified vacancies of Lecturer (Nyaya) had already been filled up from Ext.P2 list on May 17 2006 by advising the eligible candidates Similarly four eligible candidates from Ext.P3 list were advised on 27-5-2006 as Lecturer (Vyakarana)

11. This writ petition was filed on 13-1-2006, long after the candidates from the two lists had been advised and appointed. Petitioners had participated in the interview without any demur or protest. The above two crucial aspects in my view will undoubtedly dissuade this Court from invoking its extraordinary jurisdiction under Article 226 of the Constitution. It may be true that this Court had made it clear in its interim order that advice and appointment from Exts.P2 and P3 ranked lists would be subject to the result of this writ petition. But since I have already held that the selection process was not vitiated, I am satisfied that the advice and appointment of the eligible candidates already made, should not be disturbed, particularly since the advised candidates have been holding the post ever since their appointment. Having regard to the entire facts and circumstances I have no hesitation to hold that the petitioners are not entitled to get any relief in this writ petition.

12. Therefore, the writ petition fails. It is accordingly dismissed.

A.K.BASHEER, JUDGE

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